IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 743

THE LINCOLN NATIONAL BANK OF WASHINGTON, ET AL., Executors of the Estate of Michael E. Buckley, *Petitioners,*

v.

KARL KINDLEBERGER, Administrator of the Estate of Julia C. Buckley, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To The Honorable The Chief Justice And The Associate Justices Of The Supreme Court Of The United States:

Your petitioners, The Lincoln National Bank of Washington and Warren Craven, Executors of the Estate of Michael E. Buckley, respectfully submit their petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia reversing an order of the District Court of the United States

for the District of Columbia; the opinion of the Court of Appeals (R. 15-21); dissent (R. 21-24), reported in 155 F. 2d 281, 74 W. L. R. 666. The District judge did not write an opinion.

JURISDICTION.

The judgment of the United States Court of Appeals for the District of Columbia reversing an order of the District Court of the United States for the District of Columbia, was entered on April 29, 1946, (R. 25). On September 5, 1946, motion of appellee for a rehearing was denied (R. 26).

The jurisdiction of the Supreme Court of the United States is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. 347), and this petition is filed under Rule 38 of the Revised Rules of this Court, as amended May 26, 1941.

STATUTES INVOLVED.

For the convenience of the Court, we here insert the pertinent statutes (D. C. Code, 1940):

> "30-213 (14:48). Insurance for benefit of wife, children, dependent relative, or creditor not liable for husband's debts.
>
> All policies of life insurance upon the life of any person maturing on or after January 1, 1902, and which have been or shall be taken out for the benefit of or bona fide assigned to the wife or children of or any relative dependent upon such person, or any creditor, shall be vested in such wife or children or other relative or creditor, free and clear from all claims of the creditors of such insured person. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, PP. 1162)"
>
> "30-214 (14:49). Insurance payable on death of wife to children, descendants, or her representatives.
>
> If the wife shall die before her husband, the amount of such insurance may be payable after her death to the children or descendants for their use, and to their

guardian if under age; and if there be no children or descendants of the wife living at the time of her death, to her legal representatives. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, PP. 1163)."

"35-716 (5:220). Rights of creditors and beneficiaries under policies of life insurance.

When a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life in favor of some person other than himself having an insurable interest therein, or except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof other than the insured or the person so effecting such insurance, or his executors or administrators, shall be entitled to its proceeds and avail against the creditors and representatives of the insured and of the person effecting such insurance whether or not the right to change the beneficiary is reserved or permitted, and whether or not the policy is made payable to the person whose life is insured, if the beneficiary or assignee shall predecease such person * * *. (June 19, 1934, 48 Stat. 1175, ch. 672, PP. 16, c. V.)"

QUESTIONS PRESENTED.

1. Where a policy of life insurance provides that the death benefits in case the beneficiary named therein dies before the insured be paid to the insured's own estate, does Title 35, Sec. 716 of the District of Columbia Code nullify such provision and compel payment to the estate of the predeceased beneficiary?

2. Did Congress intend when it enacted Title 35, Sec. 716 of the District of Columbia Code that such statute be exclusively a law regulating rights of creditors and beneficiaries under policies of life insurance, or did it also intend it to be a statute controlling the disposition of the proceeds of life insurance policies?

STATEMENT OF FACTS.

Petitioners are the executors of the estate of Michael E. Buckley who died on December 8, 1943. Respondent is the administrator of the estate of Julia C. Buckley, wife of said Michael E. Buckley, who died intestate on October 3, 1935, thus predeceasing her husband by more than eight years. New York Life Insurance Company, of New York, in December, 1924, insured Michael E. Buckley, by its policies numbered 8937646 and 8937647, for $10,000.00 and $5,000.00 respectively. These policies matured by his death in the amounts, respectively, of $11,370.20 and $5,685.11, which sums are now held by petitioners pending the determination of this action. Photostat copies of the policies, set forth in the record (R. 5-12), show that upon issuance, both policies provided that "upon receipt of due proof of the death of Michael E. Buckley, the insured", the company would pay the proceeds "to Julia C., wife of the insured", designated as the "Beneficiary", "with the right on the part of the insured to change the Beneficiary in the manner provided in Section 7". (R. 5, 9). Section 7 of each policy was entitled "Other Benefits and Provisions" (R. 7, 11), and the pertinent clause thereof read as follows:

> ."*Change of Beneficiary.—The Insured may at any time, and from time to time, change the beneficiary, provided this Policy is not then assigned.* Every change of beneficiary must be made by written notice to the Company at its Home Office accompanied by the Policy *for indorsement of the change thereon by the Company, and unless so indorsed the change shall not take effect.* After such indorsement the change shall relate back to and take effect as of the date of the Insured signed said written notice of change whether the Insured be living at the time of such indorsement or not, but without prejudice to the Company on account of any payment made by it before such indorsement. *In the event of the death of any beneficiary before the Insured the interest of such bene-*

ficiary shall vest in the Insured, unless otherwise provided herein.'' (Italics supplied).

Both the administrator of the wife's estate and petitioners as executors of the insured's estate claimed the proceeds of the policies on the death of the insured, and the former filed his complaint therefor in the District Court (R. 2-12 inc.). The District Court dismissed the complaint upon motion of these petitioners (R. 13). Upon appeal, the United States Court of Appeals for the District of Columbia by divided court reversed the judgment of the lower court and held that, in the absence of a change of beneficiary under authority reserved in the insured to make such a change, where the beneficiary predeceased the insured, the administrator of the beneficiary was entitled to the proceeds and avails as against the executor of the insured by virtue of Title 35, Sec. 716 of the District of Columbia Code. In reaching this conclusion the Court of Appeals also mentioned in its opinion Title 30, Secs. 213 and 214 of the District of Columbia Code.

SPECIFICATION OF ERRORS TO BE URGED.

The United States Court of Appeals for the District of Columbia erred:

1. In reversing the judgment of the United States District Court for the District of Columbia.

2. In holding that respondent herein is entitled to the proceeds of the two life insurance policies involved herein.

3. In construing Title 35, Sec. 716 of the District of Columbia Code as overriding the specific directions in the insurance policies that if the beneficiary (respondent's intestate) should die before the insured (petitioners' testator) the proceeds should be paid to the estate of the insured (petitioners).

4. In failing to affirm the judgment of the United States District Court for the District of Columbia.

REASONS FOR GRANTING WRIT OF CERTIORARI.

I. The United States Court of Appeals for the District of Columbia has decided a question of general importance in a manner that will have the following results, as stated by Prettyman, J., in the Court below (R. 24):

> "(1) will nullify the provision in innumerable contracts of insurance that if a named beneficiary predeceases the insured, the proceeds shall be payable to the estate of the insured,
>
> (2) will extend the protection of the statute to a class of persons (heirs, legal representatives, legatees and creditors of a beneficiary) wholly uncontemplated by the statute, and
>
> (3) will change the long-standing rule in this jurisdiction that where a beneficiary predeceases the insured, the proceeds belong to the estate of the insured."

II. The Court of Appeals chose the one of two possible constructions of an ambiguous statute which will cause great public inconvenience to policy holders, estates of decedents and life insurance companies without assigning any reason of public policy for so doing.

III. The construction adopted by the Court of Appeals interferes with the freedom of disposition of policy holders over the proceeds of their own life insurance policies.

IV. The statute of the District of Columbia thus construed is practically identical with statutes in twelve of the States of the Union and the decision below will necessarily serve as an important precedent in these jurisdictions. In the twelve other jurisdictions no court has adopted a like construction; in New York, from which the statute involved here was largely copied, the courts ignored in this type of case the statute and directed payment in accordance with the terms of the policy.

CONCLUSION.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari issue to the United States Court of Appeals for the District of Columbia commanding said Court to certify and send to this Court for its review and determination, on a day certain to be named therein, a full and complete transcript of the record and all proceedings in said case and that said judgment of the United States Court of Appeals for the District of Columbia may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem just.

THE LINCOLN NATIONAL BANK OF WASHINGTON and WARREN CRAVEN, Executors of the Estate of Michael E. Buckley, deceased, *Petitioners,*

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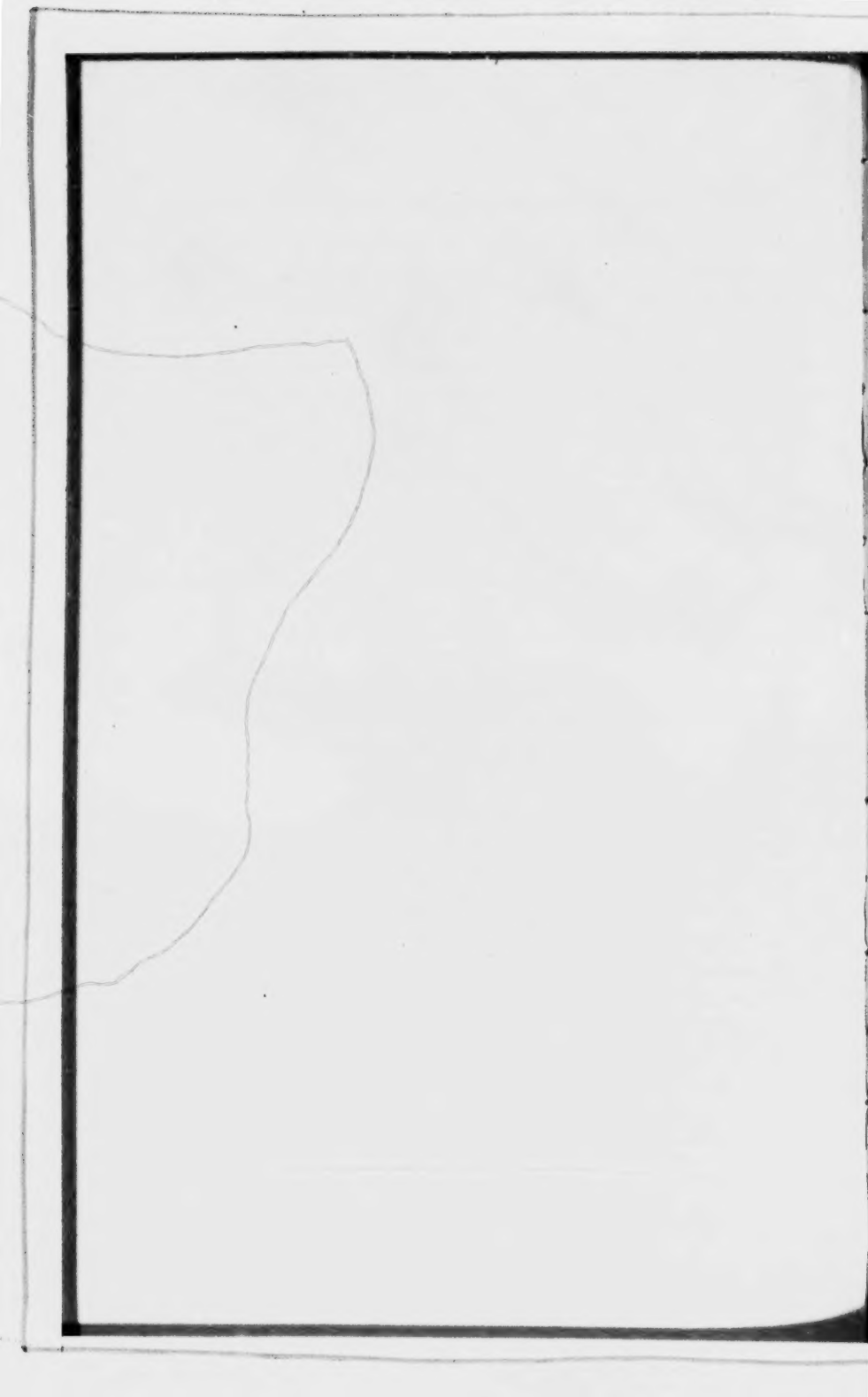

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BRIEF IN SUPPORT OF PETITION.

THE STATUTE INVOLVED, ITS LEGISLATIVE HISTORY AND ITS TRUE CONSTRUCTION.

Title 35, Section 716 of the District of Columbia Code, which this Court is asked to pass upon, was, as the majority opinion below points out (p. 3, R. 17), "largely copied" from Section 55a of the insurance law of New York—adopted in 1927, now rewritten as Section 166 of the Insur-

ance Law of 1939.[1] When the Court of Appeals of New York first construed that statute, in 1929, that court said:

> "The Legislature was dealing primarily with the conflicting rights, on the one hand, of creditors, or personal representatives of a person, whose life is insured, and, on the other hand, of a beneficiary of the policy, to an insurance fund created by the appropriation of moneys of the insured for the payment of premiums."[2]

Thus to the New York Court, the statute was an exemption law, pure and simple, and not a statute regulating the distribution of insurance moneys. No later New York case has departed from this holding. Similarly, in other States having like statutes the ruling has been that the same were exemption statutes.[3]

Section 55a of the New York Insurance Law was, as Mr. Justice Prettyman pointed out in his dissenting opinion (p. 7, R. 21), "a composite embodying the most desirable features of the Massachusetts, Pennsylvania and Washington statutes.[4] Its sponsors represented it as an exemption statute designed for the protection of beneficiaries, primarily the family, from creditors of the insured; and one of the

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[1] The pertinent portion of Section 55a reads as follows: "If a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life, in favor of a person other than himself, or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such insurance, or his executors or administrators, shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting the same, whether the right to change the beneficiary is reserved or permitted and whether or not the policy is made payable to the person whose life is insured if the beneficiary or assignee shall predecease such person; * * * "

[2] *Chatham Phoenix National Bank and Trust Company* v. *Crosney*, 251 N. Y. 189, 197, 167 N. E. 217, 219.

[3] *Bailey* v. *Wood*, 202 Mass. 562, 89 N. E. 149; *In re Lang* (Pa.), 20 Fed. (2d) 236.

[4] *Hirst, History of New York Life Insurance Law of 1927*, 4 Am. Bankr. Rev. 328 (1928).

draftsmen has said that the Referee's opinion in *In the Matter of Morris Messinger* admirably sets forth the meaning of the statute.[5] The Referee there said that 'The bulk of the statute undoubtedly follows that of Massachusetts,' and held it to be an exemption statute.'"[6]

In presenting the bill embodying this section, both the House and Senate Committees told the Congress that "The Courts have interpreted the section we have selected to exempt from bankruptcy proceedings the cash-surrender value of a policy.[7]

Eleven States, beginning in 1929, enacted statutes similar to those of Massachusetts, Pennsylvania, and New York[8], and yet no decision from any of these States treating the statute as a distribution law has been cited. The reason is not far to seek. What these States were seeking to accomplish was to grant complete exemption to policies subject to change of beneficiary by the insured, after the decision in this Court, in *Cohen* v. *Samuels*[9], holding that the trustee in bankruptcy of the insured might seize the cash value of policies which, while naming a beneficiary, reserved to the bankrupt insured the right to change the same. These States were clearly dealing with a question of exemption and not of distribution.

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[5] *In the Matter of Morris Messinger*, 29 Fed. (2d) 158 (C. C. A. 2d 1928); see also 4 Am. Bankr. Rev. 258 (1928), in which the statement of the draftsman (Mr. Hirst) appears at page 328.

[6] *In the Matter of Morris Messinger*, 29 Fed. (2d) 158; 4 Am. Bankr. Rev. 258, 265 (1928).

[7] H. R. Rep. No. 1526 and Senate Rep. No. 1420, both 73rd Cong. 2nd Sess. (1934).

[8] 1929: West Virginia, Maine, Colorado; 1931: Arkansas, New Hampshire, Rhode Island, Wisconsin, North Carolina, Delaware; 1932: Alabama; 1933, Georgia.

[9] 245 U. S. 50, 145.

DISCUSSION OF TITLE 30, SEC. 213 AND 214 OF THE DISTRICT OF COLUMBIA CODE.

The majority opinion refers to Title 30, Sections 213 and 214 of the District of Columbia Code (see pages 2 and 3) as strengthening its conclusion. But Maryland, for example, has precisely the same provisions[10] and the Maryland Courts take no such view. In *Pratt* v. *Hill,* 124 Md. 252, 92 Atl. 543, the wife had obtained an insurance policy on her husband's life, premiums thereon were paid by her, and she was named as beneficiary. She died leaving her husband and four children surviving her who continued to pay the premiums on the insurance policy and, upon the death of the husband, the proceeds of the policy were paid to the administrator of the husband. Claim therefor was made by the children who asserted a vested interest therein. The Court (at pp. 254, 255) said:

> "* * * there is nothing to show whether the policy contained any provisions as to who should have the proceeds of the policy in case of the death of the beneficiary, and if so, what they were, or whether there were any by-laws or other provisions controlling them."

And, after quoting Section 10 (corresponding to the Section 214 set forth on pages 2 and 3), it continued:

> "But notwithstanding that provision of the Code, the policy or by-laws may make other provisions, and in that case, of course, Section 10 would not apply. It would therefore be impossible for us to determine who is or are entitled to this fund from anything in the record, and we could not attempt to do so, even if the appeal is properly before us."

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[10] Sec. 9, Art. 45, Ann. Code of Md. (Flack) 1939, corresponding to Section 213 of Title 30, D. C. Code.

Section 10, Art. 45, Ann. Code of Md. (Flack) 1939, corresponding to Sec. 214 of Title 30, D. C. Code.

Again, in *Rosman* v. *Travelers Insurance Co.*, 127 Md. 689, 96 Atl. 875, the Maryland Court of Appeals said (at pp. 692, 693):

> "By the terms of the policy the insured reserved to himself the right to change the beneficiary without the consent of the beneficiary. By the overwhelming weight of authority it is held that where the rights of the beneficiary are dependent upon the will of the assured, the beneficiary acquires no vested right until the death of the insured. And this is assuredly founded upon reason; for by the contract between the insured and the insurer, any right of the beneficiary before death is a mere expectancy depending upon the will and acts of the insured. * * *
>
> "In 25 Cyc. 889, under Rights of Beneficiary, it is said: 'The beneficiary designated in an ordinary life insurance policy has a vested interest from the time the contract of insurance is made, in the absence of any stipulation for change of beneficiary by the insured.' "

Morgan v. *Penn Mutual Life Insurance Co.*, 94 Fed. (2d) 129, (1930), expresses the same view for the Federal Courts:

> "* * * where no right is reserved in the policy to change the beneficiary without his consent, the policy confers immediately upon its issue a vested right in the beneficiary that cannot be defeated by assignment or transfer without his consent, but it is equally well settled by controlling authority in the national courts that, where the policy by its terms gives the insured the right to change the beneficiary or assign the policy, the beneficiary takes only a contingent interest therein in the nature of an expectancy."

For further discussion of this principle, see *Andrews* v. *Andrews*, 97 F. (2d) 487; *Self et al.* v. *N. Y. Life Ins. Co.*, 56 F. (2d) 364; *Nance et al.* v. *Hilliard*, 101 F. (2d) 957.

GENESIS OF THE STATUTE.

It is unnecessary to refer at length to the opinions of this Court in *Cohen* v. *Samuels*, 245 U. S. 50, or *Cohn* v. *Malone*, 248 U. S. 450. Suffice it to say that under these decisions

the wife obtained no vested interest in an insurance policy where the insured reserved the absolute power to change the beneficiary, and that the cash surrender value of such a policy could be reached by the trustee of the insured in case of bankruptcy. We feel sure that in enacting Title 35, Sec. 716, the Congress intended to grant exemption to beneficiaries against the claims of the insured's creditors, and nothing else.

Finally, if it should be granted, for the sake of argument, that the phrase "or his executors or administrators" is so awkwardly placed in the section that the word "beneficiary" must be assumed to be its antecedent, and not the word "insured", this does not sustain the result reached by the majority, in view of the able and logical opinion of Mr. Justice Wylie, in *Washington Beneficiary Endowment Association* v. *Wood,* 4 Mackey 19 (1885). It was there held, in substance, that the designation in an insurance policy of a beneficiary "or her legal representatives" is not a gift to the legal representatives of the beneficiary, should she predecease the insured. Quoting from Roper on Legacies at p. 467, the Court referred to this language:

> " 'Since then a legacy to A, his executors and administrators, will, as we have seen, lapse by his death before the testator, so will a legacy given to A and his *personal representatives;* for in each case the additional words are unnecessary and merely express what the law would have directed if the testator had been silent on the subject, viz., that if A survive the testator (an event which the gift implies since no testator could be supposed to mean to give to any but those persons who shall survive him), and afterwards die before the legacy becomes payable, his personal representative shall receive it. Hence, it appears that the mere naming of the executors, administrators, or personal representatives of A is not inconsistent with the rule before mentioned respecting the lapse of legacies, and does not unequivocally show the testator's intention to substitute those persons in the place of A in the event of A's death before him.' "

CONCLUSION.

It is respectfully submitted that the question involved being one of first impression, of great importance to insurance companies and the insured public generally, and in view of the opposing opinions expressed by the judges who have passed on this question, the public interest requires that the writ of certiorari be granted and the meaning of the statute involved definitely determined by this Honorable Court.

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